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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

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| In re J.T., a Person Coming<br>Under the Juvenile Court Law.  | B292220  |
| LOS ANGELES COUNTY<br>DEPARTMENT OF CHILDREN<br>AND FAMILY SERVICES,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>SANTIAGO T.,<br><br>Defendant and Appellant. | (Los Angeles County<br>Super. Ct. No.<br>18CCJP02120C) |

APPEAL from orders of the Superior Court of Los Angeles County. Victor G. Viramontes, Judge. Affirmed.

John P. McCurley, under appointment by the Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Acting Assistant County Counsel, Stephanie Jo Reagan, Deputy County Counsel, for Plaintiff and Respondent.

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Santiago T. (Father) appeals from the juvenile court's assertion of jurisdiction over his son, J.T. He contends the jurisdictional findings are not supported by substantial evidence. We affirm the challenged orders.

### **FACTS**

Martha M.-C. (Mother) has one child with Father, nine-year-old J.T. She also has two older children with another man, 17-year-old E.M. and 15-year-old C.M.-C, who both grew up in Mexico with their maternal grandmother. C.M.-C. came to live with the family in the United States in 2014. E.M. joined them the following year.

On April 3, 2018, the Los Angeles County Department of Children and Family Services (DCFS) filed a petition pursuant to Welfare and Institutions Code section 300,<sup>1</sup> subdivisions (b) and (j), on behalf of the three children. The petition alleged the children were at risk of harm because Mother was unwilling and unable to provide E.M. "with ongoing care and supervision and has requested the child's removal from the mother's home and care due to the child's mental health problems and acting out behavior including drug use and being a chronic runaway." J.T. and C.M.-C. were alleged to also be at risk of harm for the same conduct pursuant to section 300, subdivision (j). Father was not named in the petition.

E.M. reported Mother left him in Mexico with his maternal grandmother when he was four years old to immigrate to the United States. In Mexico, he started working at an early age, but completed middle school. He smoked marijuana at a young age.

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<sup>1</sup> All further section references are to the Welfare and Institutions Code.

E.M. joined the family in the United States approximately three years ago, but Mother did not enroll him in school at that time. He worked, because Father believed it was better for him. Due to tensions with Father, E.M. soon moved from the family home to live with a cousin. He began working long hours in a restaurant and used “crystal” to stay awake. He stopped using crystal, but continued using marijuana. In a later interview, E.M. admitted, “I have tried everything; I’ve used LSD, cocaine, mushrooms, marijuana, pills, crystal meth . . . . I was using drugs for like 2 straight months 24/7. It was so bad that you could see it in my face, my skin was breaking out from the side effects of the drugs I was using.”

A police officer recommended to Mother that E.M. go to a drug treatment center. E.M. reported he was told he did not qualify for the program because he only smoked occasionally and was not abusing it. According to Mother and Father, however, E.M. refused to get treatment for his substance abuse.

When his uncle asked him to leave after a few months, E.M. stated he moved back in with Mother and Father, but soon moved out again. Mother reported she refused to allow E.M. back in the house because she thought he might hurt J.T. and because he was a bad influence on his brothers.

E.M. eventually moved into a shelter, where he planned to stay. He wanted to go to school and get another job, but did not want to move back in with Mother and Father. He blamed Father for the tension with Mother and accused Father of emotional and physical abuse when he drank.

On March 16, 2018, E.M. threatened to kill a staff member at the shelter. He was also accused of “doing something” to some of the girls at the shelter. As a result, he was placed on a

hospital hold. (§ 5585, et al.) At the hospital, E.M. reported auditory hallucinations commanding him to kill people. E.M. admitted he sometimes felt angry and wanted to kill people to make them go away. E.M. was diagnosed with “unspecified schizophrenia spectrum,” “other psychotic disorder,” and abuse of narcotics. The hospital social worker believed, however, E.M.’s symptoms might be a result of cultural and language barriers, rather than actual psychosis. After his release from the hospital, E.M. was placed in a group home and enrolled in 12th grade.

Mother reported E.M. began to use marijuana and act aggressively shortly after he arrived from Mexico. She did not enroll him in school because she thought his drug use would get worse and she did not want to cause the school any trouble. Mother accused E.M. of stealing money from her to buy drugs. She said he once stole \$1,500 from her.

Mother admitted she did not know what to do with E.M. because he was aggressive and defiant towards her. For example, he pushed her to the ground once when Mother tried to hit him with a hanger. He also destroyed a door, prompting Father to call the police.

Mother also acknowledged she had no viable plan for E.M.’s care after his release from the hospital. She wanted to send him back to Mexico to be hospitalized for substance abuse, but acknowledged he had previously refused to return to Mexico.

Mother told the social worker she did not have time to participate in services because she needed to work to support her immediate family and her mother back in Mexico. In any event, she had no intention of enrolling in services because she believed only E.M. needed services. Mother did not believe E.M. had a mental illness; she believed he only had a problem with drugs.

She did not feel responsible for the choices E.M. was making. Mother denied Father hit E.M. or that he was aggressive after he drank alcohol. She stated Father usually fell asleep instead.

Father confirmed Mother's accounts of E.M.'s aggression towards her. He threatened to leave with J.T. if E.M. returned to the family home. He told the social worker he was only concerned with J.T., who was his child. C.M.-C. blamed Father for E.M.'s troubles. He stated Father was mean to E.M. and Mother always sided with Father. He denied E.M. used drugs or that he stole money from Mother. He insisted he and E.M. recycled cans for money. He believed E.M. had to be aggressive to defend himself.

J.T. reported E.M. sometimes hits him, and "smokes a little bit of drugs[.]" He also reported E.M. screamed at Mother and made her cry. In her interview with J.T., the social worker noted he had a speech impediment and appeared to have a difficult time understanding her questions and providing a response. Mother reported J.T. is not a client of the Regional Center and does not present with any developmental delays. However, medical documents show J.T. has been diagnosed with autism, learning disability, and speech delay. J.T. also has an Individualized Education Program (IEP) due to the speech delay and is enrolled in special education classes. The social worker indicated he will be referred to the Regional Center for further assessment.

The juvenile court detained E.M. from Mother, but allowed his brothers to remain at the family home. At the adjudication hearing, the juvenile court sustained the allegations as pled under section 300, subdivisions (b) and (j), and declared the children dependents of the court. When Mother's counsel

inquired as to the basis for the juvenile court sustaining the allegation under section 300, subdivision (j), it explained:

“That the mother has exhibited an inability to care for one of the children and a lack of parenting skills, which I believe places the other children at risk. Nonetheless, while we’re not reaching disposition, I do think that the children are situated differently and I believe that the status quo with regard to where the children are placed is appropriate, so I’m not going to ask that that be disturbed.”

By the time of the disposition hearing on July 5, 2018, E.M. had turned 18 and the juvenile court ordered him removed from parental custody. The juvenile court declined to terminate jurisdiction over J.T. and C.M.-C., but ordered them to remain in the family home. The juvenile court ordered Mother to comply with her written case plan, including a parenting program, individual counseling, family preservation, conjoint counseling with E.M. when appropriate, and a support group for parents with children suffering from substance abuse. Father was also ordered to participate in a parenting program, individual counseling, and family preservation services. Father timely appealed from the juvenile court’s jurisdictional findings and dispositional orders.

## **DISCUSSION**

### **I. Father Has Standing to Appeal**

DCFS argues Father lacks standing to appeal the jurisdictional findings sustained against Mother since he is not named in the petition and there are no allegations against him. We find Father to be an aggrieved party with standing to appeal.

Only a party who is aggrieved by the challenged order may appeal. (*In re K.C.* (2011) 52 Cal.4th 231, 236; Code Civ. Proc., § 902.) A parent has standing to appeal if his personal rights have been affected by an adverse ruling. (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1134; cf. *In re Joshua M.* (1997) 56 Cal.App.4th 801, 807 [appellant mother lacked standing to assert rights held by the non-appealing father].) Courts of appeal “liberally construe the issue of standing and resolve doubts in favor of the right to appeal.” (*In re H.G.* (2006) 146 Cal.App.4th 1, 9.)

Here, Father is aggrieved by the assertion of jurisdiction over J.T., because his parental right to make decisions concerning J.T. are now abridged by the juvenile court. (§ 362, subd. (a); *In re Carmen M.* (2006) 141 Cal.App.4th 478, 486.) For example, he may not move or take J.T. out of Southern California without notifying the social worker. The juvenile court warned that violation of its orders could lead to Father’s arrest, removal of J.T. from his home, and even criminal prosecution. Under these circumstances, Father has standing to appeal.

## **II. Substantial Evidence Supports Jurisdiction Over J.T.**

Having established Father has standing to challenge the court’s dependency jurisdiction over J.T., we now consider whether substantial evidence supports it.

“ ‘In reviewing a challenge to the sufficiency of the evidence supporting the jurisdictional findings and disposition, we determine if substantial evidence, contradicted or uncontradicted, supports them. ‘In making this determination, we draw all reasonable inferences from the evidence to support the findings and orders of the dependency court; we review the record in the

light most favorable to the court's determinations; and we note that issues of fact and credibility are the province of the trial court." [Citation.] "We do not reweigh the evidence or exercise independent judgment, but merely determine if there are sufficient facts to support the findings of the trial court. [Citations.]" ' ' ' ( *In re I.J.* (2013) 56 Cal.4th 766, 773 (*I.J.*).)

Because jurisdiction over J.T. was based on the abuse and neglect of E.M., we consider whether J.T. is a child as described by section 300, subdivision (j). A child comes within the definition of subdivision (j) if: the child's sibling has been abused or neglected as defined in subdivisions (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected as defined in those subdivisions. (*I.J., supra*, 56 Cal.4th at p. 772.)

Subdivision (j) further directs the court to "consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child." (§ 300, subd. (j).) Thus, subdivision (j) affords the juvenile court greater latitude than the other subdivisions to determine whether a child is at substantial risk of harm. (*I.J., supra*, 56 Cal.4th at p. 774.)

Here, the first requirement has been met because the juvenile court found E.M. was neglected as defined in subdivision (b).<sup>2</sup> There is no contention that jurisdiction was improper as to

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<sup>2</sup> A jurisdictional finding under section 300, subdivision (b) requires: " " "(1) neglectful conduct by the parent in one of the specified forms; (2) causation; and (3) 'serious physical harm or illness' to the child, or a 'substantial risk' of such harm or illness."



E.M.; he faces a substantial risk of harm due to Mother's inability or unwillingness to parent him. Indeed, Father acknowledges, "the evidence shows Mother was ill-equipped to deal with the extreme behavioral issues exhibited by E.M."

Father rests his appeal on the second requirement. He contends there is insufficient evidence to show a substantial risk that J.T. will be similarly neglected. According to Father, the risk of harm to E.M. stems from his unique circumstances, and there is no evidence that Mother's failure to parent E.M. puts J.T. at risk of harm. The record, however, reveals that Mother's failure to acknowledge and address J.T.'s developmental delays echoes her failure to acknowledge and address E.M.'s mental health issues. Thus, there is substantial evidence in the record demonstrating a substantial risk of harm to J.T.

The record shows Mother denied E.M. had a mental illness despite his hospitalization. Further, she acknowledged she had no viable plan for him once he was discharged except to send him back to Mexico to be hospitalized despite the fact he had previously refused to move back to Mexico.

Mother likewise denies J.T. has any problems and has no plan in place to help him. J.T. has been diagnosed with autism, learning disability, and speech delay. He has an IEP due to the speech delay and is enrolled in special education classes. During

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[Citation.]’ ” (*In re James R.* (2009) 176 Cal.App.4th 129, 135.) “The third element ‘effectively requires a showing that at the time of the jurisdictional hearing the child is at substantial risk of serious physical harm in the future (e.g., evidence showing a substantial risk that past physical harm will reoccur).’ [Citation.]” (*Ibid.*) A showing of parental fault is not necessary for jurisdiction to be proper under subdivision (b). (*In re R.T.* (2017) 3 Cal.5th 622, 624.)

her interview with J.T., the social worker noted he appeared to have a difficult time understanding her questions and providing a response. Yet, Mother denied J.T. had any developmental delays and reported he is not a client of the Regional Center.

Mother told the social worker she did not know how to help E.M. It is apparent she also does not know how to help J.T. More concerning, she has refused services, including those which may help her parent J.T. Given Mother's reluctance to improve her parenting skills, her failure to get him help for his developmental delays, and his relative youth, there is sufficient evidence of a substantial risk to J.T. of future harm.

Father contends we may take none of the facts concerning J.T. into consideration because they were not alleged in the petition. This argument lacks merit. We must consider all evidence that may be probative in determining whether there is a substantial risk to the child. (§ 300, subd. (j).)

#### **DISPOSITION**

The jurisdictional findings and dispositional orders are affirmed.

BIGELOW, P. J.

We concur:

STRATTON, J.

WILEY, J.